

Personnel

Employment Regulations

Complaint
Resolution**POLICY:**

- .01 It is the Laboratory's policy to provide a conflict resolution system that can respond to employment-related concerns and complaints. In addition to providing this formal complaint resolution policy, the Laboratory offers and encourages the use of informal resolution means such as mediation and the Ombuds Program. "Open door" discussions between employees and supervisors/managers are also encouraged whenever possible.
- .02 The complaint process set out in this policy (AM 111) is voluntary and is offered by the Laboratory as an alternative to other administrative or legal procedures that may be available to employees. An employee does not give up the right to pursue other administrative or legal remedies regarding the matters raised in the complaint by filing a complaint under this policy. However, if an employee files an administrative proceeding or a lawsuit regarding the same matters raised in a complaint filed under this policy at any time while a complaint under this policy is pending, the Employee Concerns Program (ECP) staff may administratively close all or part of the pending complaint under this policy as permitted by law.
- .03 If a complaint that is eligible for formal hearing (*see* [.25](#)) is not resolved at the Initial Phase (*see* [.20-.22](#)), an employee may at that point decide either to pursue further relief under this policy (by formal hearing or senior manager decision, *see* [.30-.44](#)) or to pursue other administrative or legal remedies. If the employee requests further review under this policy, the employee must agree to the procedures set out in this policy.
- .04 Before filing a complaint, an employee should attempt to resolve the complaint with the immediate supervisor/manager.

**Informal Resolution
Attempt**

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Who May File a Complaint

- .05 Laboratory employees, except members of the Senior Management Program, are eligible to file a complaint under this policy. Employees who voluntarily terminate or retire from the Laboratory, except those who allege retaliation for participation in protected activity as defined by law, regulation, or the Laboratory Whistleblowers Policy and Guidelines for Reporting Improper Activity ([AM 729](#)), are not eligible to file a complaint under this policy. Laboratory affiliates, except those who allege retaliation as defined in this paragraph, and employees of contractors are not eligible to file a complaint under this policy.

Reviewable Actions

- .06 To be reviewable under this policy, a complaint must allege (1) that a specific Laboratory management action has adversely affected the employee's existing terms or conditions of employment, or (2) that a specific Laboratory management action has adversely affected the employee by violating a provision of the Laboratory's Administrative Policies and Procedures Manual.
- .07 This complaint policy will be followed to resolve allegations of retaliation that stem from use of the Laboratory's Sexual Harassment Policy ([AM 711](#)), the Whistleblowers Policy and Guidelines for Reporting Improper Activity ([AM 729](#)), or any other activity protected from retaliation by law or Laboratory policies.

Exclusions

- .08 The following matters are not reviewable under this policy:
- Content of Laboratory policies;
 - Job classification standards and/or salary rates or ranges for job classifications;
 - Health and welfare benefits established by the Department of Energy (DOE) or the University of California (UC), including health, retirement, and insurance benefits;
- NOTE:** Concerns or inquiries about the issues listed above may be submitted for

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consideration to the Laboratory's Director of Human Resources (DHR).

- Management actions that are mandated by law, court order, contractual obligation, or DOE and other regulatory agency regulations or directives;
- Termination from short- or limited-term appointments or from new employee evaluation period status except as permitted in [AM 113.09-10](#), and [AM 103.11-12](#); and
- Reassignment from management or team leader positions except as permitted in [AM 102.16-17](#).

Time Limitation of Filing

- .09 Except as otherwise provided in this policy, any complaint under this policy must be filed with the ECP in writing within 30 calendar days after the date on which the employee knew or could reasonably be expected to have known of the event or action that gave rise to the complaint. *See also* [10-11](#).
- .10 ***Involuntary Termination*** — For any complaint alleging involuntary termination from employment, an employee has from the date that the final notice of termination is received to 30 calendar days after the effective date of termination to file a written complaint. If the termination is because of a reduction in force, the employee has from the date that the employee is notified that he or she has been selected for a reduction in force to 30 calendar days after the effective date of termination to file a written complaint.
- .11 ***Retaliation*** — A complaint alleging retaliation that stems from use of the Whistleblowers Policy and Guidelines for Reporting Improper Activity ([AM 729](#)) must be filed within 12 months of the date of the alleged retaliation.
- .12 ***Computation of Time*** — For purposes of computing time under the provisions of this policy, the day of the act, event, or omission from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or-Laboratory holiday, in which case the period

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runs until the end of the next day which is not one of the previously mentioned days.

Eligibility Decisions

- .13 The ECP administers this policy and determines whether a complaint is timely and qualifies for review at any step of this policy. If the employee disagrees with that determination, he or she may appeal to the DHR within 10 calendar days from the time the decision is received. If the employee disagrees with the DHR decision, he or she may appeal to the Deputy Laboratory Director for Business Administration and Outreach (DLD/BAO) within 10 calendar days from the time the decision is received. If the employee disagrees with the DLD/BAO decision, he or she may appeal to the Assistant Vice President - Human Resources and Benefits at the University of California Office of the President (UCOP) within 20 calendar days from the time the DLD/BAO decision is received. The employee may appeal a DLD/BAO decision to the UCOP only if the decision concerns timeliness of the complaint and/or whether it is within the scope of this policy. The UCOP decision is final.

Representation

- .14 The employee filing the complaint and the Laboratory may be represented by any person of their choosing.

Pay Status

- .15 Employees, their witnesses and representatives who are employees of the Laboratory, and participating managers are in pay status when participating in meetings related to this policy convened by the Laboratory (for example, by the ECP) or in hearings scheduled under this policy.

Remedies

- .16 A hearing officer or a senior manager is limited to restoring any pay, benefits, or rights lost as a result of the action taken and may, in his or her discretion, award costs, expenses, and attorney's fees in favor of a prevailing employee.

Retaliation: Complaint Process Use and Participation

- .17 No employee will be subject to retaliation for using or participating in the complaint resolution processes.

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Suspension of Processing During Informal Resolution Attempts .18 After filing a complaint, if the employee is pursuing or wishes to pursue informal resolution, he or she may request in writing that ECP staff suspend processing of the complaint at any stage of the process for up to 30 calendar days.

Factfinder Pool .19 Each division-level manager will nominate up to 3 Laboratory employees from his or her organization to serve as factfinders. From these nominations, the DLD/BAO will select the persons who will receive training and serve as factfinders. Persons who complete the training will become members of a standing factfinder pool for a period of two years (*see* [.27](#)).

INITIAL PHASE OF COMPLAINT PROCESS

Filing Complaints .20 To file a complaint, the employee must submit a written complaint form to the ECP. The complaint must

- Identify the specific management action(s) to be reviewed;
- Specify how the employee was adversely affected;
- List the section(s) and specific provision(s) of Laboratory policies alleged to have been violated, if any, and state how the provisions were violated;
- Specify the remedy requested; and
- Provide any other information required to support the complaint.

Determination of Timeliness and Scope .21 Upon receipt of a complaint, the ECP staff will determine whether the complaint is timely and within the scope of this policy. If the ECP staff determines that the complaint is not timely or is not within the scope of this policy, it will administratively close the case, subject to the employee's right to appeal that decision. (*see* [.13](#).)

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Response of Line Manager

- .22 If the complaint is timely and within the scope of this policy, the ECP staff forwards the complaint for a written response to the manager who took the action about which the employee is filing the complaint (usually the employee's group-level manager). Unless given an extension in writing by ECP staff, the manager has 15 calendar days from the date of receiving the complaint to either resolve the complaint to the employee's satisfaction (and document the resolution in writing, signed by the employee and the manager) or respond in writing to the employee.

FURTHER REVIEW FOR COMPLAINTS NOT RESOLVED IN THE INITIAL PHASE

Review by Senior Manager

- .23 If the issues were not resolved, the employee may within 15 calendar days after receiving the manager's written response (*see* [.22](#)), or after the date that such response was due but not received, make a request the ECP for further review by the employee's senior manager (usually the division-level manager) who is the next higher level manager in the chain of command. The process for further review by the senior manager depends on the issues in the complaint (*see* [.30-.44](#)).
- .24 **Conflict of Interest** — If the senior manager has been directly involved in the issue under review, ECP staff will forward the complaint to the next higher-level manager in the chain of command for review. Concerns about the direct involvement of the senior manager may be presented to the ECP. If the concern is not resolved, the employee or responding manager may ask the DLD/BAO to appoint another person who has no apparent conflict of interest to review the complaint. The DLD/BAO will review the request and decide whether or not to appoint another person to review the complaint. The decision of the DLD/BAO is final.

Criteria for Complaints

- .25 The ECP staff will determine whether the complaint

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Eligible for Formal Hearing

is eligible for formal hearing. A complaint is eligible for a formal hearing if it involves

Disciplinary action taken under [AM 112](#) resulting in a salary decrease, withholding of a salary increase, demotion, or suspension without pay, and written reprimands relating to such actions;

Involuntary termination, including but not limited to reduction in force and medical termination;

Claims of discriminatory management action in violation of [AM 101](#), Nondiscrimination, Equal Employment, and Affirmative Action;

Claims that management action relating to hours of work, overtime, shift and weekend differential, holidays, vacation, sick leave, or leave of absence was taken in violation of Laboratory policies or for unlawful discriminatory reason; or

Reprisal for using the complaint resolution process or any other policy that protects employees from reprisal, including Nondiscrimination, Equal Employment, and Affirmative Action ([AM 101](#)); Sexual Harassment ([AM 711](#)); Whistleblowers Policy and Guidelines for Reporting Improper Activities ([AM 729](#)); Intellectual Freedom ([AM 730](#)); and Integrity in Research ([AM 731](#)).

Process for Complaints Not Eligible for Formal Hearing

- .26 If the complaint is not eligible for a formal hearing, the ECP will forward the complaint to the senior manager for review. The employee may request or the decision-maker (the senior manager) may determine to submit the issues to a neutral factfinder who has no involvement in the matter.
- .27 **Selection of the Factfinder** — The factfinder will be selected from a pool of 5 trained factfinders selected by the DLD/BAO. The employee and the responding manager select the factfinder by the alternate striking of names (*see* [.19](#)).
- .28 **Factfinding and Decision** — If a factfinder is designated, the factfinder will investigate the

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complaint. The factfinder gives a written report of the facts to the senior manager, the responding manager, and the employee. The responding manager and the employee may within 5 calendar days provide any additional information in writing to the senior manager.

NOTE: Examples of issues that can be reviewed under this process are performance appraisals, salary actions, position classification, and nonselection for transfer or promotion.

- .29 **Written Decision** — The senior manager must within 20 calendar days of receiving the complaint, or, if there is factfinding, within 20 calendar days of receiving the factfinder's report make a written decision. This is the final step in the complaint resolution process for complaints not eligible for a formal hearing. The senior manager's decision is binding on the Laboratory.

Process for Complaints Eligible for Formal Hearing

- .30 If ECP staff determines that the complaint is eligible for a formal hearing, the employee may choose one of the following processes (*see* [.25](#)):
1. Formal Hearing: Hearing before a hearing officer who will issue a final and binding decision (*see* [.31 - .37](#)) or
 2. Senior Manager Decision: Factfinding by a neutral factfinder and a final and binding decision rendered by the employee's senior manager, or by the next level manager, if appropriate (*see* [.24](#)). There is no hearing (*see* [.38 - .43](#)).

Senior Manager Decision Before Formal Hearing

- .31 If the employee selects the formal hearing process, (*see* [.30](#)), the ECP will submit the complaint to the employee's senior manager, or the next higher-level manager if appropriate (*see* [.24](#)), for review before proceeding further with the formal hearing process. The senior manager will review the complaint and issue a written decision within 20 days of receipt of the complaint. If the employee is not satisfied with the decision of the senior manager, the employee may, within 10 days after the receipt of the senior

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manager's decision, request that the complaint proceed to formal hearing.

Formal Hearing

- .32 ***Formal Hearing Agreement*** — Before the complaint proceeds to formal hearing, the employee must agree to the terms and conditions of a formal hearing by signing a written agreement that contains

A copy of the formal complaint along with a statement that the hearing must resolve all matters raised in the complaint that have not been previously resolved;

A statement that the hearing officer will have exclusive authority to resolve disputes relating to interpretation and/or applicability of the agreement and this policy except to the extent that such authority is specifically reserved in this policy to the Laboratory or UC;

A statement that the employee will not file any administrative or legal actions regarding the matters raised in the complaint and will withdraw or dismiss any such actions the employee may previously have filed regarding the matters in the complaint (or a representation that no such actions have been filed);

A statement that the formal hearing must be held in Los Alamos, New Mexico, at a site designated by and provided by the Laboratory, unless an alternate location is agreed to by all parties;

A statement that the agreement is entered into voluntarily and not in reliance on any promise or representation not contained in the agreement and that the agreement is not an express term or condition of employment;

A statement that the employee agrees that the decision of the hearing officer is final and binding on all parties subject only to judicial review as provided in [.36](#); and

A statement that the hearing will be conducted under the authority of and in accordance with the provisions of AM 111 and the rules of the organization providing

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the hearing officer, insofar as the organization's rules are consistent with AM 111. In the event of a conflict between AM 111 and the rules of the organization, AM 111 takes precedence.

- .33 ***Selection of Hearing Officer*** — The hearing officer must be selected from a list of hearing officers provided by a recognized organization in the business of providing hearing officers for resolving labor and employment matters. The selection must be accomplished by means of the standard selection procedure used by the organization and, where applicable, as defined in this policy. If it is not possible to obtain a list of hearing officers from a recognized organization, the UCOP will provide a list of 5 professional hearing officers, and the hearing officer will be selected by the alternate striking of names.

- .34 ***Formal Hearing Process*** — The hearing process provides an opportunity for the employee (or the employee's representative) and the manager (or manager's representative) to examine and cross-examine witnesses and submit relevant evidence.

Each party must provide the other with relevant material that will be offered and the names of witnesses who will testify at the hearing. To the extent possible, this information should be provided at least 7 calendar days before the hearing.

The hearing is closed to all but the parties and their representatives and a designated employee relations specialist unless both parties agree otherwise.

The hearing officer has broad discretion regarding the admissibility and weight of evidence and will be guided by generally accepted standards regarding admissibility of evidence. Offers of settlement are not admissible.

The hearing officer cannot issue subpoenas.

The hearing officer is bound by Laboratory policy and cannot add to, deviate from, or

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otherwise modify personnel policies or implementing procedures.

The hearing must be recorded either by tape or other method as determined by the Laboratory. If the Laboratory determines to record the hearing on tape, the employee may, at the employee's expense, also record the hearing by stenography.

Final and Binding Decisions

- .35 The decision of a hearing officer is final and binding on all parties, pursuant to the agreement signed by the employee (*see* [.32](#)). The employee cannot have the same matter reviewed in a court of law except as stated in [.36](#)

Judicial Review of Final and Binding Decisions of Hearing Officer

- .36 An employee or the Laboratory may seek to have an appropriate court overturn a final and binding decision by a hearing officer only when the decision is alleged to have been
- Arbitrary, capricious, and/or unsupported by substantial evidence;
 - In violation of constitutional, statutory, or common law, or otherwise illegal; or
 - Beyond the hearing officer's authority as defined in this policy.

Costs

- .37 The employee and the Laboratory will each pay half of the fees for the selection and services of a hearing officer; when these costs to the employee exceed \$250, the Laboratory will pay the remainder. The hearing officer has the discretion to assess these costs equally between the employee and the Laboratory if he or she determines that the complaint is frivolous. Unless otherwise agreed upon by the parties or determined by the hearing officer, the expenses of witnesses for either side must be borne by the party calling such witnesses (except as noted in [.15](#)).

Senior Manager Decision (in Lieu of Formal Hearing)

- .38 **Senior Manager Decision Agreement** — When an employee chooses the option of a senior manager decision (*see* [.30](#)), the employee must agree to the

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terms and conditions of a written agreement that contains

A copy of the formal complaint along with a statement that the decision must resolve all matters raised in the complaint that have not been previously resolved;

A statement that the senior manager will have exclusive authority to resolve disputes relating to interpretation and/or applicability of the agreement and this policy except to the extent that such authority is specifically reserved in this policy to the Laboratory or UC;

A statement that the employee will not file any administrative or legal actions regarding the matters raised in the complaint and will withdraw or dismiss any such actions the employee may previously have filed regarding the matters raised in the complaint (or a representation that no such actions have been filed);

A statement that the agreement is entered into voluntarily and not in reliance on any promise or representation not contained in the agreement and that the agreement is not an express term or condition of employment; and

A statement that the employee agrees that the decision of the senior manager is final and binding on all parties subject only to judicial review as provided in [.44](#).

Factfinding

- .39 The employee may request or the senior manager may direct that the complaint be investigated by a neutral factfinder before it is submitted to the senior manager.
- .40 ***Selection of Factfinder*** — The employee and the responding manager select the factfinder by the alternate striking of names from a list of 5 names provided by the DLD/BAO (*see* [.19](#)).
- .41 ***Factfinder Investigation*** — The factfinder will investigate the complaint and give a written report of the facts to the senior manager, the responding

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manager, and the employee. The responding manager and the employee have 5 calendar days to provide any additional information in writing to the senior manager.

- .42 **Written Decision** — The senior manager must, within 20 calendar days from receipt the factfinder's report, issue a written decision, deciding all issues raised in the complaint that have not been previously resolved.

Final and Binding Decision

- .43 The decision of the senior manager is final and binding on the Laboratory and the employee where the employee chose a decision by the senior manager instead of a formal hearing. The Laboratory will not seek to overturn such a decision made by a senior manager.

Judicial Review of Final and Binding Decisions of Senior Manager

- .44 An employee may seek to have an appropriate court overturn a final and binding decision by the senior manager only when the decision is alleged to have been
- Arbitrary, capricious, and/or unsupported by substantial evidence;
 - In violation of constitutional, statutory, or common law, or otherwise illegal; or
 - Beyond the senior manager's authority as defined in this policy.

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PROCEDURES:

These procedures effective until further notice.

Joined Complaints

- .45 Complaints of two or more employees that relate to the same issue may be reviewed together if the employees request such a review. When two or more complaints relate to the same incident or dispute, an effort will be made to consolidate the complaints and agree upon a single decision-maker or hearing officer.

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| Complaint File | .46 | Materials generated in filing a complaint, including the complaint form, must be maintained by the ECP in a file separate from the employee's official personnel file. (See also AM 628 , <i>Access to Personal Information</i> .) |
| Employee Concerns Program | .47 | ECP specialists are available to explain the complaint resolution processes, including discussing whether an employee's complaint qualifies for formal review, and provide the appropriate forms. |
| Flow Chart | .48 | The processes described in this policy are illustrated in a flow chart . |